



In the Matter of :

**DAVID PATE,**

**ARB CASE NO. 01-029**

**COMPLAINANT,**

**ALJ CASE NO. 00-STA-51**

**v.**

**DATE: March March 22, 2001**

**THOMAS POULTRY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

David Pate, *Pro se, Jasper, Alabama*

*For the Respondent:*

Richard E. Smith, Esq., *Christian & Small, LLP, Birmingham, Alabama*

**FINAL DECISION AND ORDER**

David Pate filed a complaint with Occupational Safety and Health Administration (OSHA), alleging that he had been terminated in violation of the employee protection provision of the Surface Transportation Assistance Act (STAA), 49 U.S.C.A. §31105 (West 1997). Following an investigation, OSHA determined that the case had no merit. Pate objected to that determination and requested a hearing before a departmental Administrative Law Judge (ALJ). At the hearing Pate informed the ALJ that he had been unable to obtain counsel and requested additional time to do so. The ALJ granted that request and postponed the hearing. However, prior to the date of the rescheduled hearing Pate notified the ALJ that he still was not able to obtain counsel, and requested that the hearing “be cancelled [and] dismissed.”

On January 24, 2001, the ALJ issued a Recommended Order of Dismissal. Relying upon 29 C.F.R. §18.39(b)(2000) -- which provides that “a request for hearing may be dismissed upon its abandonment or settlement by the party or parties who have filed it . . .” -- the ALJ granted Pate’s request and dismissed Pate’s objections and request for a hearing.

The case is now before the Board pursuant to the automatic review procedures of the STAA implementing regulations. 29 C.F.R. §§1978.109(a) and (c)(1). Pursuant to Complainant's request and for the reasons stated by the ALJ we **DISMISS** this case.

**SO ORDERED.**

**PAUL GREENBERG**

Chair

**CYNTHIA L. ATTWOOD**

Member

**RICHARD A. BEVERLY**

Alternate Member